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THE SCOPE OF DIVERSITY AND *IKHTILĀF* (JURISTIC DISAGREEMENT) IN THE *SHARĪ'AH*

*MOHAMMAD HASHIM KAMALI**

THE RELATIVE VALUE OF *IKHTILĀF*

It is due mainly to the recognition and tolerance of disagreement among the *'ulamā'* over juristic issues that Islamic law is often described as a diversity within unity: that is, unity as regards basic principles, and diversity regarding details. A tangible manifestation of *ikhtilāf* in Islamic law is the prevalence of at least five different schools of jurisprudence which have survived to this day and have followers throughout the Muslim world. Islamic law has in fact nurtured a rich tradition of diversity and disagreement just as it has remained open to the influence of other legal traditions.

Having said this, however, we need to view *ikhtilāf* in conjunction with two other principles of Islam, namely *tawḥīd*, that is, belief in the oneness of God and the far-reaching unitarian influence that it has on Islamic thought and institutions. *Tawḥīd* is the first article of the Muslim faith and a major theme of the Qur'ān. There is only one God. Likewise, there is one Islam, one scripture, (i.e. the Qur'ān) and one *ummah* (community) and one *Sharī'ah*. A symbolic manifestation of this unity in faith is also evident from the fact that all Muslims pray in the direction of the Ka'bah. Unity in the essence of belief is not open to any level of compromise or *ikhtilāf*. The Qur'ān (21:92) declares Muslims as one nation — *ummatan wāḥidatan* — which is at once the witness and guardian of its own unity in faith, and this is also true of the *Sharī'ah*. We may have different schools and *madhāhib*s, all incorporating equally valid yet different versions of the *Sharī'ah,* but this level of plurality

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does not alter the fact that there is only one *Sharī'ah*, which is manifested in the clear textual injunctions of the Qur'ān and *Sunnah*. The *madhāhib* that have emerged and survived in the course of centuries are the schools of *Fiqh* which have interpreted the *Sharī'ah* in the light of the needs and realities of their time. None has claimed to be a *Sharī'ah* unto itself, but interpretations of the same *Sharī'ah* that is shared by all.

Fiqh has been defined as knowledge of the practical rules of the *Sharī'ah* pertaining to the conduct of a competent person *(mukallaf)*, a knowledge that is derived from the detailed evidence *(adillah tafṣīliyyah)* in the sources of the *Sharī'ah*. This definition is self-explanatory on the point that *Fiqh* is primarily concerned with the practicalities of conduct, and not with the essence of belief; it is also clear that *Fiqh* is neither coterminous, nor identical, with the *Sharī'ah*. It is a part of the *Sharī'ah*, the part which is concerned with practical legal rules. In point of fact, the *Sharī'ah* is wider than *Fiqh* as it comprises in its scope not only practical legal rules, but also dogmatic theology *('ilm al-'aqā'id)*, and moral teachings *('ilm al-akhlāq)*. The definition of *Fiqh* also tells us that the rules of *Fiqh* are derived from a detailed study and interpretation of the evidence that is found in the Qur'ān and *Sunnah*. *Fiqh* is thus a derived knowledge; it is neither totally original, nor entirely based on personal opinion.[1]

The comments that I have made so far are meant to place *ikhtilāf* in its proper perspective. *Ikhtilāf* basically operates in the realm of *Fiqh*. The dogma of Islam and its moral teachings are not open to *ikhtilāf*. Even the slightest level of disagreement over the normative validity of belief in the essentials of the faith, its five pillars, for example, and the essence of moral virtue is not tolerated and the *'ulamā'* have spoken in no uncertain terms on this. The unitarian (*tawḥīdī*) outlook and philosophy of Islam is truly very strong, but people tend to notice disagreement more often than consonance and agreement. It is also worth mentioning, perhaps, that in recent times we have seen signs of a gradual strengthening of the voice of unity among Muslims. There were times, for example, when the schools of law during the era of imitation — *taqlīd* — were emphatic about their own identity to the extent of occasionally making a self-righteous assertion of their own interpretations of the *Sharī'ah*. But it is interesting to note that many a prominent Sunnī jurist of the present century writes on the juristic legacy of the *Shī'ī 'ulamā'* and appreciates their contributions in the spirit of objectivity and acceptance. Note, for example, the late Muḥammad Abū Zahrah, a well-known jursit and a prolific writer on *Fiqh* and on the contributions of the major *fuqahā'* of Islam, wrote a book on the life and works of the Shī'ite

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Imām, Ja'far al-Ṣādiq, and his contributions to the legacy of Islamic scholarship. The voluminous *Fiqh* encyclopedias that have appeared in the later part of this century have also adopted the same catholicity of spirit: The subject arrangement therein is alphabetical and their contents are not confined to the views of only the four leading Sunnī schools of Islamic law, but also include the views of the Shī'ah Imāmiyyah, the Ẓāhiriyyah, the Zaydiyyah and the Ibāḍiyyah. The academic style and content of the information that is recorded in several of these valuable works bears no obvious vestige of the narrow scholastic bias of the earlier times.[2]

IKHTILĀF AND *IJMĀ'*

As we have already noted, *ikhtilāf* is accepted at the level of juristic interpretation only, and I shall presently elaborate on its origins and causes, but even at this level the two competing concepts of *ijmā'* and *ikhtilāf* need to be seen together, as the one evidently limits the intensity and scope of the other. I would have no difficulty in providing a ready answer to the question as to which of these two carries greater authority and weight. For we know that *ijmā'* commands normative validity as a proof and source of Islamic law, next to the Qur'ān and the *Sunnah*.

Notwithstanding the difficulties that we now face over the feasibility of *ijmā'*, in theory at least, it is the only binding proof next to the *nuṣūṣ* (textual injunctions) that is known to Islamic jurisprudence. *Ijmā'* essentially embodies the collective conscience of the Muslim community, their agreement and undivided consensus over the correct interpretation of the text and propriety in *ijtihād*. An individual opinion and *ijtihād*, however authoritative and sound, is not binding on anyone, and everyone enjoys the liberty to have an opinion, and so disagreement is naturally expected before an *ijmā'* materialises over a particular ruling. For *ijtihād* can hardly be visualised without disagreement and it is, in this sense, another name for *ikhtilāf*. But *ikhtilāf*, which is acceptable at this level, must meet two basic requirements, one of which is that each of the opposing views is based on valid evidence, and the other that none of the opposing views leads to what is unfeasible, or entirely unrealistic. Disagreements which fail to meet these requirements have no credibility and should be abandoned.[3] These two conditions also differentiate *ikhtilāf* from what is known as *khilāf*, that is unreasonable disagreement. It thus appears that *ikhtilāf* must have a basis in *ijtihād* in that it is supported by valid evidence.

A great deal of what is known by the name of *ijmā'* begins with *ijtihād,* and disagreement in *ijtihād* is not only tolerated but considered

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to be beneficial. If the issue over which *ijtihād* is exercised is important to the community as a whole, then it calls for general consideration and scrutiny by the *'ulamā'* and *mujtahidūn*. Two possibilities can then be envisaged: the individual *ijtihād* is not supported by *ijmā'*, in which case it remains an isolated opinion, or else it is elevated to the rank of *ijmā'* when general consensus materialises in its support. In this process *ikhtilāf* is tolerated as a matter of principle and no one is entitled to pressurise a scholar, a jurist or a *mujtahid* so as to prevent him from expressing opinions in accordance with his true convictions. But when there is general consensus over a particular ruling *ikhtilāf* must come to an end, and the scholar or *mujtahid* who might have a different opinion is expected, like everyone else, to abandon his opinion and follow the ruling of *ijmā'*. This is precisely what is meant when we say that *ijmā'* is a binding proof. The *raison d'etre* of *ijmā'* is clearly to put an end to *ikhtilāf* and ultimately to vindicate the outlook and spirit of unity that is of central importance in Islam.

CAUSES OF *IKHTILĀF*

Disagreements among the *'ulamā'* are caused by a variety of factors which may be summarised into three: (1) disagreement over linguistic matters that relates to the understanding and interpretation of the relevant text; (2) disagreement over the knowledge and authenticity of *aḥādīth* relevant to a subject; and (3) disagreement over the proofs and principles of *Uṣūl al-Fiqh*. The first of these, that is, differences over interpretation was known during the lifetime of the Prophet, and those questions which were brought to his attention were clarified by the Prophet himself. But the *'ulamā'* have noted numerous instances in the text of the Qur'ān and *Sunnah* on which no clear information is recorded from the Prophet (peace be on him) or the Companions and the matter therefore remained subject to interpretation and *ikhtilāf*. Outside the definitive injunctions of the Qur'ān, in the areas of speculative and general (*ẓannī* and *'āmm*) rulings of the text, they still remain open to interpretation even if they have received an interpretation in the valid precedent. It may be stated as a matter of principle that disagreement is not valid over clear and decisive texts of the Qur'ān and *Sunnah*. But as we have noted above, the Qur'ān contains words and sentences that remain open to interpretation. Disagreements over the meaning of a word may be due to the occurrence of homonyms which carry more than one meaning. The word *qurū'* (2:228), for example, has more than one meaning. The text in question is concerned with the waiting period (*'iddah*) of a divorced woman, which she must observe before she marries again. Her *'iddah*

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consists of three *qurū'*, which could mean either three menstruations (*ḥayḍ*) or three clean periods (*ṭuhr*) between menstruations. The latter meaning would actually imply four menstruations and, therefore, a longer waiting period. The Companions differed over this and some among them, including 'Uthmān ibn 'Affān, 'Ā'ishah and Zayd ibn Thābit held the latter meaning whereas 'Umar ibn al-Khaṭṭāb and 'Abd Allāh ibn Mas'ūd held the former. The *'ulamā'* of Iraq, including the Ḥanafīs, have followed 'Umar ibn al-Khaṭṭāb's interpretation whereas the majority of the *'ulamā'* of Ḥijāz, including the Shāfi'īs, have followed 'Uthmān and 'Ā'ishah, and the *ikhtilāf* has remained unresolved ever since.[4]

To illustrate disagreements over the meaning of words in the *Ḥadīth*, I would refer to a *ḥadīth* on the subject of divorce which proclaims that "no divorce nor manumission (can take place) in a state of *ighlāq*" (*lā ṭalāq wa lā 'itāq fi ighlāq*). While many have held that the word *ighlāq* means duress, others have held it to mean anger. Ibn Qayyim al-Jawziyyah, concurring with his teacher, Ibn Taymiyyah, is of the opinion that *ighlāq* means obstruction of the faculties of awareness and purpose (*insidād bāb al-'ilm wa'l-qaṣd*) and has consequently held that divorce pronounced in a state of insanity, intoxication, extreme anger and even by an imbecile (*ma'tūh*) are all null and void.[5]

The word of the text may sometimes convey both a literal and a metaphorical meaning and there are instances of this in the Qur'ān. For instance, in the context of ritual cleanliness, the ablution *(wuḍū')* that is taken for obligatory prayers is normally vitiated in various ways, including physical contact with members of the opposite sex. The words that are used in the Qur'ān are "... or when you touch women — *aw lāmastum al-nisā'* — then you must take a fresh ablution". The Ḥanafīs understood the word *lāmastum* to mean sexual intercourse, whereas the Shāfi'īs maintain both the literal and the metaphorical meanings of the word which means that *wuḍū'* is broken not only by sexual intercourse but also by a mere handshake with the member of the opposite sex. The *ikhtilāf* of this question has also remained unresolved ever since.[6]

In a similar vein, the Qur'ānic language on the subject of commands and prohibitions is not necessarily value-specific. A word may occur in the imperative mood and it may convey either an obligation (*wujūb*), a mere recommendation (*nadb*), or even a permissibility (*ibāḥah*), which is far removed from the idea of a command. Thus the Qur'ānic word *fa'ktubūh* (reduce into writing) transactions involving future obligations, or credit-based transactions (see 2:282) is linguistically a command but documentation here is generally held to be only recommended, not

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obligatory. Only the Ẓāhiriyyah have held that the text here conveys an obligation and have consequently made documentation a requirement of every loan and deferred transaction.[7] We also read in the Qur'ān command forms such as *kulū wa-'shrabū* (eat and drink, 7:31) and also with reference to the *ḥajj* ceremonies it is provided that when you finish the *ḥajj,* then you [proceed to] hunt — *fa'ṣṭādū* — (5:2). The words in both these examples only convey permissibility even though they are in the imperative mood.[8]

A prohibition (*nahy*) in the Qur'ān may likewise convey a total ban, which is the normal meaning of a prohibition, or it may convey a mere reprehension (*karāhiyyah*), or guidance (*irshād*) or indeed a host of other meanings, and the precise import of the words of the text is often determined by reference to supportive evidence in the Qur'ān itself or the *Ḥadīth,* and the *'ulamā'* are not always in agreement over the conclusions they have drawn from their readings of the text.[9]

Another cause of *ikhtilāf* among the leading schools of law is due to the variation of localities, customary practices (*'urf*) and cultural environments. The Ḥanafī *madhab* was developed in Iraq whereas the Mālikī school was mainly developed in the Ḥijāz and they have each reflected the cultural leanings and custom of the society in which they had emerged. It is interesting to note, for example, that Shāfi'ī's scholastic work was developed initially during the years of his residence in Baghdād and subsequently in Egypt where he resided for several years. It is claimed that he found the customs of the Egyptians so different that he revised and changed a great deal of his earlier rulings, so much so that he is generally known to have developed two schools, the old and the new. Changes of time and place and developments in the customs and culture of society are not confined to these schools but are generally reflected in the works of the *'ulamā'*.[10] An *ikhtilāf* that originates due to cultural and customary differences is not always confined to minor issues as the scope of disagreement among schools and scholars often extend from specific issues to methods of reasoning, attitudes and perceptions over the basic evidence of the *Sharī'ah*.

Another cause of *ikhtilāf* is the ignorance of *a ḥadīth*, especially in the early period, that is, prior to the compilation and collections of *aḥādīth* in mid-third century *Hijrah*. Some of the disagreements that arose between the Traditionists (*Ahl al-Ḥadīth*) and Rationalists (*Ahl al-Ra'y*) related to the fact that the scholastic centres of Kūfah and Baṣrah in Iraq had not known some of the *aḥādīth* that were known in Makkah and Madīnah. This would explain why the *'ulamā'* of Kūfah resorted more frequently to *ra'y* and *qiyās* on issues over which they had not

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known of *aḥādīth*. Even the *'ulamā'* of Madīnah were not at times well-informed of the relevant *ḥadīth* and resorted to Medinese practice (*'amal ahl al-Madīnah*) or to *qiyās*.

This may be illustrated by reference to the *ḥadīth* concerning the option of contractual session (*khiyār al-majlis*) which neither Abū Ḥanifah nor Mālik, the leaders respectively of the *Ahl al-Ra'y* and *Ahl al-Ḥadīth,* had implemented in their rulings on the matter. The reason for this is that the *ḥadīth* in question was either not known to them or that they had known it but did not consider it reliable enough since it was a solitary *ḥadīth* and was not widely known to them to rely on it. Mālik referred the issue to the Medinese practice which did not correspond with the *ḥadīth*. But when subsequent investigation lent support to the *ḥadīth* and the fact that it was recorded by both Bukhārī and Muslim as a *marfū' ḥadīth* (i.e. *ḥadīth* that goes back to the Prophet), it was generally followed by the majority of the *madhāhib*, except for the Mālikī *madhhab*, which still disagreed and upheld *'amal ahl al-Madīnah*.[11] The *ḥadīth* in question provided that "when two men negotiate a sale, each of them has an option to withdraw until they part company". A *mujtahid* who had known a particular *ḥadīth*, or had known it but considered it weak of authenticity, might have relied instead on a manifest — *ẓāhir* — text of the Qur'ān or arrived at a ruling by way of analogy to the text. Another *mujtahid* might have known a more relevant *ḥadīth* and the result would be differential conclusions over the same issue.[12]

Another level of *ikhtilāf* that originates in a *ḥadīth* relates to variation in the reports of different narrators of the *ḥadīth*. A *ḥadīth* is sometimes narrated by more than one narrator, one of which may have conveyed a fuller version than the other, or that one of them might refer to the efficient cause (*'illah*) of its ruling and the other does not. The *mujtahid* may consequently consider one to be more reliable than the other and various possibilities of *ikhtilāf* can arise in such situations.

The third cause of *ikhtilāf* that is known to the *'ulamā'* is over the methodology and principles of *Uṣūl al-Fiqh*. Considerable differences have arisen among schools over the acceptance or otherwise of a certain proof or principle of *Uṣūl al-Fiqh*. There are differences, for example, with regard to juristic preference *(istiḥsān)* which the majority have accepted as a valid proof and source of the *Sharī'ah* but which the Shafi'īs have rejected altogether. *Istiḥsān* is the nearest *Sharī'ah* equivalent of the doctrine of equity in Western jurisprudence and it authorises a judge and a *mujtahid* to find an alternative solution to an issue in the event where strict application of the existing law leads to rigidity and unsatisfactory results. And then with reference to *ijmā'* we

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note that the Mālikīs have held the Medinese consensus — *ijmā' ahl al-Madīnah* — to be the most authoritative, or even the only valid form of *ijmā'*. The majority, on the other hand, considers *ijmā'* as an embodiment of the general consensus of the learned *mujtahid*s of the Muslim community without it being necessarily confined to any particular region as such.

The leading schools have also differed over the authority of the *fatwā* of a Companion as a proof and basis of judgment (*ḥukm*). Whereas some have seen the verdict and ruling of a Companion as a true manifestation of the *Sunnah* of the Prophet (peace be on him) and therefore authoritative. Others have disagreed and stated that the *fatwā* of a Companion is authoritative over something which the latter has narrated from the Prophet (peace be on him), but not otherwise. Similar differences of orientation have arisen over considerations of public interest — *istiṣlāḥ* — and custom — *'urf* —. The Mālikīs, on the other hand, are the main exponents of *istiṣlāḥ*, and the Ḥanafīs of *'urf*, the other leading schools accept them each to a limited extent and the result is usually shown in their different rulings and conclusions over specific issues.

The scope of *ikhtilāf* over methodological principles also extends to rules of interpretation and the implied meaning of word forms such as the general and the specific (*'āmm* and *khāṣṣ*). Compare, for instance, the position of the Ḥanafīs to that of the majority — *jumhūr* — on the implications of the general and specific rulings of the Qur'ān and *Sunnah*. The general (*'āmm*) ruling of the text is definitive (*qaṭ'ī*) according to the Ḥanafīs but it is speculative (*ẓannī*) according to the majority (*jumhūr*). One of the consequences of this would be that no conflict can arise between the *'āmm* and the *khāṣṣ*, according to the majority, since the latter will always prevail over the former. But since the Ḥanafīs consider the *'āmm* to be definitive — *qaṭ'ī* —, a conflict can arise between one *qaṭ'ī* textual evidence and another.

The *madhāhib* have also differed over their methodologies of establishing the authenticity of a *ḥadīth*, especially the solitary (*āḥād*) *ḥadīth*. It is a report of odd individuals, which remains below a *mutawātir* or a *mashhūr ḥadīth*. The Ḥanafī methodology concerning the *āḥād aḥādīth* tends to be more stringent thereby precluding a chain of transmission, or *isnād*, in which there is weakness more rigorously than the other *madhāhib*. For instance, the Ḥanafīs prefer the manifest (*ẓāhir*) of the Qur'ān over the ruling of the *āḥād ḥadīth*. To illustrate this I refer to the subject of guardianship in marriage of an adult woman. The Ḥanafīs maintain that the adult female is entitled to conclude her own

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marriage contract, whereas the other three schools require the presence of the legal guardian (*walī*) to validate the marriage. The majority have relied on one of the *āḥād aḥādīth* which simply declares: "There shall be no marriage without a guardian". The Ḥanafīs have relied instead on the Qur'ānic verse: "If he has divorced her, then she is not lawful to him until she marries (*ḥattā tankiḥa*) another man" (2:229). The occurrence of the Arabic word form *tankiḥa* in the feminine singular mode has enabled the Ḥanafīs to conclude that an adult woman may contract her own marriage. The text here is characterized as *ẓāhir* (manifest) in respect of guardianship as this is a secondary theme of the text, the main theme being that of divorce, which is why it (i.e. *ẓāhir*) is considered a weaker evidence. Yet the Ḥanafīs have preferred it to the *ḥadīth* mentioned above, which, although definitive in meaning, is less than it in respect of authenticity and proof.[13] The Ḥanafīs have also preferred the general (*'āmm*) of the Qur'ān, and at times even a ruling based on analogy (*qiyās*), to a weak *ḥadīth*. With reference to eating out of forgetfulness during the fast of Ramaḍān, for example, the Ḥanafīs, unlike the majority, did not follow the *ḥadīth* which exonerated this and allowed the person to ignore it and complete his fast. The Ḥanafīs instead held, by analogy, that a belated fast should be observed. The Mālikīs have generally preferred the Medinese practice to *āḥād ḥadīth*, and such differences of methodology have naturally had a bearing on the rules which the *madhāhib* have derived from the available evidence.[14]

ETIQUETTE OF DISAGREEMENT — *ADAB AL-IKHTILĀF* —

The science of *Uṣūl al-Fiqh* is, from beginning to end, concerned with establishing a correct and effective methodology for *ijtihād*, and therefore also for *ikhtilāf*. *Uṣūl al-Fiqh* is designed to encourage *ijtihād* in accordance with a set of guidelines. These guidelines go a long way to help distinguish acceptable *ijtihād* from that which is arbitrary and excessive. For so long as we accept in principle the validity of *ijtihād*, we must also accept *ikhtilāf* within its valid parameters. The Qur'ān and the *Sunnah* are generally supportive of rational enquiry into its laws, which is borne out by the fact that the Companions were actively engaged in discussing legal questions. They differed from one another on matters of interpretation and *ijtihād* but at the same time they tended to acknowledge and tolerate juristic *ikhtilāf* among themselves. Their method to resolve matters relating to *ikhtilāf* in *ijtihādī* issues was by having recourse to consultation — *shūrā* — which is a Qur'ānic principle and the Prophet (peace be on him) had regularly resorted to it himself. But before they resorted to *shūrā*, the Companions normally referred to

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the Qur'ān and the *Sunnah*, in search of solutions to issues. Only in the absence of a clear ruling in the text did the Companions resort to *shūrā* and *ijtihād*. The following *ḥadīth* is often quoted as a theoretical basis for legitimating *ijtihād*: "When a judge exercises *ijtihād* and gives a right judgment, he will have two rewards, but if he errs in his judgment he will still have earned one reward".[15]

In addition to providing the basic ground for *ijtihād*, this *ḥadīth* also encourages the spirit of tolerance in academic endeavour by promising a reward even for one who might have inadvertently fallen into error. Since the *ḥadīth* has taken a positive view of such efforts, other scholars and fellow *mujtahid*s are also required to exercise restraint in denouncing a view which they might consider erroneous. This *ḥadīth* also lends support to the conclusion that a judicial decision that is made in the true spirit of *ijtihād* is enforceable and the judge may not be taken to task for it if it later turns out that he had made an error of judgment. Similarly, when a person trusts the integrity and knowledge of a scholar of the *Sharī'ah* and acts upon his verdict (*fatwā*) on a legal question but later discovers that the *fatwā* was erroneous, he would have committed no wrong, simply because the *ḥadīth* exonerates an error of that kind in the first place.[16] The reward that is promised in this *ḥadīth* is, however, earned by judges and *mujtahid*s whose sincerity and devotion to a good cause are not in question.

The Prophet (peace be on him) also directed his Companions to avoid disagreement that is purposeless and destructive. 'Abd Allāh ibn 'Umar has reported that on one occasion the Prophet (peace be on him) heard two people arguing over a verse of the Qur'ān apparently on some minor points such as accentuation and vowelling. The Prophet (peace be on him) heard their arguments and came out evidently angered with the kind of *ikhtilāf* in which they were engaged and said: "Verily people were destroyed before you for (their excessive) disagreement over the scripture".[17]

Yet on another occasion when a similar disagreement had arisen over the recitation of a portion of the Qur'ān, the Prophet (peace be on him) noted the sincerity of the disputants and addressed them in these words: "Both of you are well-meaning". He, however, warned them to "avoid (excessive) disagreement. For people before you were destroyed because of that".[18]

This *ḥadīth* is quoted by al-Bukhārī in a chapter bearing the title "*Karāhiyyat al-Ikhtilāf*" (the Reprehensibility of *Ikhtilāf*) which evidently portrays an image of how al-Bukhārī viewed *ikhtilāf*. The expression *halakū* (they were destroyed) occurs in both the *aḥādīth* referred to

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above. *Ikhtilāf* can, in other words, be destructive even if the parties might mean well.

VARIETIES AND STYLE

The *'ulamā'* have classified *ikhtilāf* into three varieties of praiseworthy — *maḥmūd* —, such as disagreement with the advocates of heresy and misguidance; blameworthy or *madhmūm*, of the kinds mentioned in the *aḥādīth* cited above; and one which falls between the two. This last variety of *ikhtilāf* is the more difficult of all the three types as it involves ambiguity and confusion that can be misleading, and may therefore demand greater effort to identify its pitfalls. Be that as it may, the hallmark of the distinction between the praiseworthy and blameworthy *ikhtilāf* is sincerity and devotion, or the lack of it, as the case may be. Whether the purpose is a worthy one, such as the advancement of sound *ijtihād*, or one which is tainted with selfish interest and caprice is likely, in the final analysis, to play a crucial role in determining the merit or demerit of *ikhtilāf*.[19]

In his *Risālah*, al-Shāfi'ī has divided *ikhtilāf* into two types: forbidden disagreement (*al-ikhtilāf al-muḥarram*) and permissible disagreement (*al-ikhtilāf al-jā'iz*). Disagreement is forbidden in matters which are determined by clear textual evidence in the Qur'ān and the *Sunnah* of the Prophet (peace be on him) for anyone who is aware of it. Al-Shāfi'ī then quotes in support the Qur'ānic directive to the believers: "And be not like those who are divided amongst themselves and fall into disputations (*ikhtalafū*) after receiving clear signs" (3:105). God — the Most High — has denounced *ikhtilāf* in what has been regulated by clear evidence, which consists "either of a clear text of the Qur'ān or the *Sunnah* or of analogy thereon".[20]

As for matters on which the evidence is open to interpretation, which is the sphere of permissible *ikhtilāf*, al-Shāfi'ī refers to the general rules and guidelines of *ijtihād* which he has discussed in his *Risālah* with the proviso that priority should be given to supportive evidence that can be obtained from the *Sunnah* or by recourse to analogy — *qiyās* —.[21]

Ibn Taymiyyah has distinguished two levels of disagreement, namely substantive disagreement amounting to contradiction (i.e. *ikhtilāf al-taḍād*) and disagreement of variance (*ikhtilāf al-tanawwu'*). The former usually consists of two views that are diametrically opposed to one another and they cannot be reconciled. The majority opinion on this type of disagreement is that only one of the opposing views could be right and declared as such but not both. Examples of this type of *ikhtilāf* among scholars are found on the question of freewill and determinism or in the

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views and doctrines of different factions of jurists and mystics. The matter is different in *ikhtilāf al-tanawwu'* which consists basically of variant interpretations, one of which may be recommended while the other is neither denounced nor falsified. This is where preference (*al-tarjīḥ*) finds valid expression, simply because both sides rely on valid evidence. In Ibn Taymiyyah's assessment, by far the largest portion of *ikhtilāf* that has arisen in the Muslim community falls under the latter variety of *ikhtilāf*.[22]

The leading authorities of Islamic jurisprudence are on record in praising one another for their sincere contributions and have hardly, if ever, denounced one another for their differential opinions. They have also urged their disciples not to be blind followers of the opinions of the founders of their *madhab* but to refer to the sources on which they had relied themselves. The leading authorities have all emphasised adherence to the Qur'ān and the *Sunnah* as a matter of priority; then they counselled recourse to consensus (*ijmā'*) and to analogy (*qiyās*) in the absence of a clear textual ruling on a particular question.[23]

Ikhtilāf is a well developed area of *Fiqh* and works of scholarship on *ikhtilāf* date as far back as those of *Fiqh* itself. The first extant work of *ikhtilāf* known to us was by Abū Ḥanīfah (d. 150) which bore the title *Ikhtilāf al-Ṣaḥābaḥ* (Disagreement among the Companions). Then his disciple Abū Yūsuf (d. 182) wrote a book entitled *ikhtilāf Abī Ḥanīfah wa Ibn Abī Laylā*. Al-Shāfi'ī also wrote a book entitled *Ikhtilāf Abī Ḥanīfah wa'l-Awza'ī*; has a chapter on *ikhtilāf* in his *Risālah*; and has recorded in *Kitāb al-Umm* his own disagreements with Mālik on many issues. Ibn Jarīr al-Ṭabarī (d. 307) wrote a more general work on *ikhtilāf* entitled *Ikhtilāf al-Fuqahā'*.

The style and content of these works have also changed over time. Initially the style of writing tended to be somewhat defensive and sought to vindicate one's own views or school of following without expatiating in the works of the other *madhāhib*, except perhaps where they differed from one another. Subsequent works on *ikhtilāf* such as that of Ṭabarī's *Ikhtilāf al-Fuqahā'* and Ibn Rushd al-Qurṭubī's, *Bidāyat al-Mujtahid* tended to acquire a comparative stye of writing, and later still, especially after the fifth century *Hijrah*, that is, following the decline of *ijtihād*, *ikhtilāf* works were influenced by regional developments and the focus was shifted to disagreements within the ranks of the schools, such as those between the leading *imām* and his disciples, or among the disciples themselves. Ibn 'Ābidīn's *Radd al-Muḥtār* may be cited as an example of this approach. Another development of note in this context is that the writers began to indicate their preferable positions and there emerged a

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genre of juristic literature on preferences (*al-tarjīḥāt*) which developed as an epiphenomenon of *ikhtilāf*.

Two works that merit special attention are that of al-Kāsānī's *Badā'i' al-Ṣanā'i'* and *al-Mughnī* of Ibn Qudāmah for their balanced comparison which highlights not only the disagreements but also the points of unanimity and agreement among the *madhāhib*.[24]

TWO EXAMPLES OF *IKHTILĀF*

I refer here to two examples of *ikhtilāf* which relate to disagreement over the interpretation of the textual directives of the Qur'ān and the *Sunnah* respectively.

1. For an illustration of juristic *ikhtilāf*, I refer first to the differential rulings of the *madhāhib* on the revocation of a gift (*al-rujū' fi'l-hibah*) prior to delivery. Mālik and the *'ulamā'* of Madīnah have held that it was not permissible and the only exception to this was a gift by one's parents (father and mother) who were entitled to revoke a gift they had given to their offspring during their lifetime. Aḥmad ibn Ḥanbal and the Ẓāhirī school have held, on the other hand, that it is not permissible for anyone to revoke a gift. Abū Ḥanīfah has held the opposite view which entitles everyone to revoke a gift except when it is granted to a close relative who happens to be within the prohibited degrees of marriage. A general consensus seems, on the other hand, to have developed to the effect that no one may revoke a gift which was intended as a charity for the sake of gaining the pleasure of God.

The basic ground of disagreement here consists of two *aḥādīth*, one of which declares that "one who revokes a gift is like a dog that turns back on its vomit",[25] and the other *ḥadīth*, on the authority of Ṭāwūs which provides that "it is not permissible for the donor of a gift to revoke it except in the case of the father".[26] The mother's position is said to be analogous to that of the father. Shāfi'ī is reported to have said: "Had the *ḥadīth* of Ṭāwūs reached me (through reliable) *isnād*, I would have ruled upon it". As for the view that generally validates revocation of a gift except when the donee is a close relative, it is based on a report from the Caliph 'Umar ibn al-Khaṭṭāb who has been quoted to the effect that "a gift granted to a close relative, or by way of charity, may not subsequently be revoked".

A general reference has also been made in this connection to the moral enormity of revoking a gift, and the *ḥadīth* in which the Prophet (peace be on him) has said that "I have been sent in order to accomplish what is morally virtuous".[27] The jurists have resembled a gift prior to delivery to a promise (*al-wa'd*) which entails only a moral responsibility

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but which cannot legally be enforced. The only exception here is a gift that is intended as charity and the exception here has been endorsed by general consensus — *ijmā'* —.

The majority of jurists have held that when the father gives a gift to his son and then the son dies after receiving the gift, the father may receive it back through inheritance. It is reported that during the Prophet's time, a man of the Anṣār from Khazraj tribe had given gift of a garden to his parents and then the parents died leaving the same property in their estate. The matter was brought to the Prophet's attention whereupon he said: "You have earned the reward for your charity and you may now take it back by way of inheritance".[28] It thus appears that taking the gift back through inheritance, or indeed after a lapse of time when the return is by mutual agreement, is not apprehended. The moral enormity attached to the revocation of a gift is, as already stated, prior to delivery. For transfer of ownership of the gifted object is completed upon delivery and possession, and from that point onwards, the matter is no longer a moral issue, but governed by legal rules, which means that any subsequent transfer of ownership must be by mutual consent of the transacting parties.

2. To illustrate juristic *ikhtilāf* that originates from the variant interpretations of the words in the Qur'ān, I refer to the verse on the type of divorce known as *al-īlā'*. The verse in question provides:

> Those who swear that they will abstain from intercourse with their wives should wait for four months. Then if they go back, God is surely Forgiving, Merciful. And if they resolve on a divorce, God is surely Hearing, Knowing (2:226).[29]

Īlā' typically occurs when the husband takes an oath of abstention, pledging he will abstain from sexual intercourse with his wife. Ibn 'Abbās has stated that the pre-Islamic Arabs used to take such oaths frequently, and did so at times when the wife refused to comply with her husband's demand over something, he would then take an oath that he shall not approach her. She was left in a state of suspense for one year, perhaps even two or three years, or even longer during which time she was neither a wife nor a divorcee.[30] Then this Qur'ānic ruling came and set a limit of four months for the Muslims to determine the position of their estranged wives one way or another after the completion of that period. Sa'īd ibn al-Musayyab also explained that "when a man did not like his wife and yet did not wish to divorce her, he swore that he shall not approach her ever again ... God Almighty then set a limit to this form of abuse".[31] The above verse effectively declared that if the

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husband did not resume conjugal relations with his wife within four months, the wife shall be divorced. The rules of *īlā'* which the jurists have elaborated also apply to instances of deliberate desertion of the wife by the husband without a valid excuse as I shall presently explain.

The Qur'ān has laid down the basic terms of *īlā'* without providing details as to the specific terms of its application and this is where the jurists have disagreed widely as follows:

Abū Ḥanīfah, Mālik and their followers, as well as al-Awzā'ī and al-Nakha'ī and many others have held that the Qur'ānic terms of *īlā'* apply equally whether the marriage has been consummated or not, whereas al-Zuhrī, 'Aṭā' and Ṣufyān al-Thawrī have held that *īlā'* can only occur after consummation. The jurists have also disagreed as to the implications of the Arabic words *fa-in fā'ū* (if they turn back) in the verse as it implies return from a state of anger, hence the interpretation by many Companions, including 'Alī, Ibn 'Abbās, Sa'īd ibn Jubayr and many jurists of subsequent generations that *īlā'* can only occur when pronounced in a state of anger. The renowned Companion Ibn Mas'ūd and numerous prominent *'ulamā'*, including ibn Sīrīn, Mālik, Shāfi'ī and Aḥmad Ibn Ḥanbal have held — and this is the correct view — that like other varieties of divorce, *īlā'* can occur both in a state of anger and in the normal state. Ibn Rushd has confirmed this by saying that the words of the verse are general (*'āmm*) and specifying their import to the state of anger would need to be supported by evidence, of which there is none.[32]

The jurists have also differed regarding the time period which is actually mentioned by the husband when pronouncing *īlā'*. There are four views on this:

(a) 'Abd Allāh ibn 'Abbās has held that *īlā'* occurs only when the husband swears that he will "never approach her" again.

(b) Abū Ḥanīfah, his disciples, al-Thawrī and the *'ulamā'* of Kūfah have held that the period of *īlā'* is four months and a divorce occurs upon the expiry of this time unless the husband resumes marital relations before that time.

(c) Mālik, Shāfi'ī and Aḥmad ibn Ḥanbal have held that *īlā'* does not occur unless the period actually exceeds four months. There may, in other words, be a pause, after the four months' period, in which a decision has to be made on what to follow next.

(d) According to another opinion even a single day that is specified in the oath of abstention is enough to make *īlā'* come into effect.[33]

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The reason for this disagreement is that the Qur'ān has specified the waiting period for the wife but has not specified any period that the husband might mention himself.

It is also stated that the word *fā'ū* in the verse signifies sexual intercourse when there is no valid excuse on the part of the husband. But if the husband abstains for a valid reason such as illness, travelling or imprisonment, he may resume conjugal relations afterwards. Only when the excuse comes to an end such as by recovery from illness, or by release from imprisonment, and he still abstains from sexual intercourse, the spouses may be separated on ground of *īlā'*.

A number of early *'ulamā'* including, 'Ikrimah, al-Nakha'ī and al-Awzā'ī have held that the husband may revoke the oath of *īlā'*, even when he is ill or in prison, by declaring his intention in words, in the presence of witnesses, and according to Aḥmad ibn Ḥanbal, if the husband is unable to speak, he may revoke *īlā'* by gesture or even in his mind. Abū Ḥanīfah is of the opinion that when unable to attempt sexual intercourse, the husband may just declare in words that "I have returned to my wife". But there is an opinion attributed to Sa'īd ibn Jubayr that revocation of *īlā'* (which is called *al-fay'*) does not occur except through sexual intercourse, even when the husband is on a journey or in prison.[34]

Then there is also the question of expiation (*kaffārah*) which the husband needs to make, for breach of oath, when he returns to his wife. There are two opinions on this, one of which maintains that the position here is analogous to breaking any other oath and the normal *kaffārah* for a breach of oath would apply. Thus when a man says to his wife: "By God I shall not speak to you" and then he speaks, or says: "By God I shall not approach you" and then he does, he is in breach of his oath and therefore liable to *kaffārah*. The second opinion on this question is that no *kaffārah* is necessary, and this is because of the wording of the verse that "... If they go back, God is surely Forgiving, Merciful" (2:266). Others have held that the reference to mercy and forgiveness here is general and does not absolve the husband from the *kaffārah*.[35]

The *'ulamā'* have also differed over the interpretation of the phrase in the said verse which refers to a divorce (*ṭalāq*) that "if they resolve on a divorce — *wa in 'azamu 'l-ṭalāq*..."—. Does the divorce that ensues *īlā'* take place automatically or whether it occurs by means of a judicial decree? Many *'ulamā'* have held, and this included the leading Companions, 'Umar ibn al-Khaṭṭāb, 'Uthmān, 'Alī, 'Abd Allāh ibn Mas'ūd and 'Abd Allāh ibn 'Abbās, and also several leading *'ulamā'* including Sufyān al-Thawrī and Abū Ḥanīfah to the effect that divorce follows automatically; that is, upon the expiry of the four-month period.

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There is also disagreement as to the nature of the divorce and whether it is a revocable (*raj'ī*) or a final (*bā'in*) divorce. Many leading Companions, the majority of the *madhāhib* and a number of jurists have held that if the husband does not resume marital relations with his wife, he must pronounce a divorce, otherwise the judge may order a revocable divorce. This is because all divorce in the *Sharī'ah* is presumed to be revocable unless there is evidence to prove otherwise. Yet Abū Ḥanīfah has differed from the majority and has held that the divorce that follows is final (*bā'in*).

The Mālikī jurist Ibn al-'Arabī has stated the Mālikī position to the effect that when the husband deliberately abstains from conjugal relations with his wife with malicious intention — even though there is no valid impediment, such as illness, even if he has not taken the oath of abstention by way of *īlā'*, his position is analogous to *īlā'*. The wife may accordingly seek judicial relief, after four months of abstention, and the judge may then assign a time, as of the date of the complaint, for the husband to resume marital relations within that period, failing which the rules of *īlā'* will be invoked. For it is said that *īlā'* is not just a verbal pronouncement and may include anything that falls within its meaning, that is, any deliberate act of desertion that is intended to harm and humiliate the wife. Thus when a man swears that he shall not speak to his wife, or shall not support her and so on, and actually acts on his word while intending to harm her, his position is analogous to *īlā'* and the rules of *īlā'* apply to him. This is because the Qur'ān has ordered the husband to "live with them in fairness" (4:19) and any act which is deliberate and harmful is enough to violate the Qur'ānic directive on fair treatment.[36] While referring to this view, the well-known contemporary jurist, Yūsuf al-Qaraḍāwī, has concurred, despite some disagreement that the *'ulamā'* have recorded about it. There is a view, in particular, that the judge should not order a divorce and should merely advise the husband and admonish him to fear God and cease harming his wife. Al-Qaraḍāwī has stated that if the conclusion is that the husband has violated the spirit of fairness as the Qur'ān has decreed, then the judge must act in order to put an end to abuse.[37]

In both of the above examples, it can clearly be seen that all instances of *ikhtilāf* that the *'ulamā'* have recorded are based on sound evidence and they therefore belong to the category of permissible *ikhtilāf*. I may add here that I have not cited the often-quoted *ḥadīth* which proclaims that "disagreement of my community is a source of grace/mercy" because of its doubtful authenticity. In his section on *ikhtilāf* in the *Risālah*, al-Shāfi'ī has not referred to this *ḥadīth* nor is it recorded

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by al-Bukhārī and Muslim, which is why some scholars have expressed some reservation about it. But supposing it were authentic, then grace/ mercy (*raḥmah*) can only be associated with *ikhtilāf* that is within its valid parameters and partakes in sound *ijtihād*.

CONCLUSION

The existence of *ikhtilāf* as a well-developed and recognised branch of *Fiqh* is naturally indicative of a healthy climate of tolerance among the leading *'ulamā'* and scholars of Islam. The fact that several schools of law have attempted to provide equally valid interpretations of the *Sharī'ah* they have accepted one another and they, in turn, were accepted by the Muslim community at large. All this is a further evidence to the reality of pluralism in Islamic law.

It is also interesting to note that in the formative stages of Islamic jurisprudence — during the first three centuries — the scholars tend to excel in the degree of latitude and acceptance of *ijtihād*-oriented *ikhtilāf*. The Companions have disagreed about matters of interpretation and it is even said that they had reached a consensus on this: the agreement to disagree, and their example also finds support among the leading authorities and *'ulamā'* of the era of *ijtihād*. One might expect that the subsequent generations of *'ulamā'* would have preserved and even enriched this valuable heritage. Somewhat contrary to such expectations, however, the climate of understanding and openness was subsequently subjected to restrictions during the era of imitation (*taqlīd*) where one finds instances of verging on rigidity and stricture among the lower ranks of the *'ulamā'*. To accept the plurality of the schools of law is indicative of healthy *ikhtilāf*. Hence, for a scholar/ imitator to claim total superiority of his school and take an over-critical and dismissive view of other schools is decidedly unsound and contrary to the original spirit of *ikhtilāf*.

Ikhtilāf has played an evidently important role in the development of the rich legacy of *Fiqh* and *Sharī'ah* that will continue to provide a lasting source of influence. One can hardly overestimate the inspiring spirit of sound and principled *ikhtilāf* in our own generation. Yet *ikhtilāf* has a place in the legal and intellectual heritage of Muslims which should not be exaggerated. A legal order in society can simply not proceed on the basis of never-ending *ikhtilāf*. The value of *ikhtilāf* is therefore relative and not an independent to conformity and consensus that must clearly be accepted as the stronger influences which demarcate the ends of acceptable *ikhtilāf*. I say this partly because I believe that the *madhhabī* divisions in the present day Muslim *ummah*, especially

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between the Sunnīs and the Shī'ah, and even among the students of different Sunnī legal corpus often tend to violate the spirit of sound *ikhtilāf*. I have seen some Muslim youth in university campuses, some of whom have associated themselves with partisan movements, to be restrictive and intolerant of even a mild degree of liberality and openness, or of conservative orientations, as the case may be, that they observe on the part of their peers and associates.

This I believe to be a far cry from the healthy precedent and example that has enriched the intellectual legacy of Islam, and merits constant attention, and dignified appreciation and respect. We can simply not afford to be intolerant of our differences and disagreements on various issues.

Yet we also need to be cautious about over-indulgence in *ikhtilāf*. Muslim individuals and scholars could perhaps afford to encourage *ikhtilāf* more widely in certain periods of their history when they enjoyed the confidence that was generated by the superiority of their political power and then a rigorously productive scholarship. But I believe that there is a great need today for Muslims to appreciate the value of unity and consensus while recognising in the meantime that unity and consensus which emerge out of open deliberation and principled *ikhtilāf* are what deserve our best attention. *Ikhtilāf* and consensus are often inseparable even if they appear to be at the opposite ends of one another.

To say that the Muslim community can totally eliminate disagreement and *ikhtilāf* over all questions is plainly unrealistic and has no historical precedent. The reality of living in a world where disagreements must inevitably exist is one which has dominated the greater part of Muslim history and it is no longer a matter of choice for the contemporary *ummah*. But then the question may still arise as to how should the Muslims cope with *ikhtilāf* on issues that they encounter from time to time. I propose to end this section with providing a tentative response to this question.

The substance of the response that I attempt here is basically the same as has been known to Islamic jurisprudence throughout the ages. The main thrust of the responsibility to resolve *ikhtilāf* accordingly falls on the shoulders of the *ulu 'l-amr*, government leaders and those in charge of the community affairs. They must address and determine *ikhtilāf* by reference to the nature of the questions involved and the urgency or otherwise of providing a solution for them. Thus we read in a legal maxim of *Fiqh* the declaration that the "command of the Imām puts end to disagreement" (*amr al-Imām yarfa' al-khilāf*). The substance of this maxim is upheld in yet another maxim which simply provides that

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"the command of the Imām is enforceable" (*amr al-Imām nāfidh*). It is a prerogative, therefore, of the lawful government and the head of the state to select for purposes of enforcement an interpretation or a ruling of *ijtihād* that is in the best interest of the community. There may be several interpretations of a particular text of the Qur'ān or the *Sunnah*, or indeed a variety of non-textually based *ijtihād* relating to the same issue, in which case the Imām is within his rights to select one in preference to others. In doing so, the Imām, or those in charge of such a selection, must act on the best interest and *maṣlaḥah* of the people. This is, in fact, the subject of another legal maxim which provides that the "affair of the Imām is determined by reference to *maṣlaḥah*" (*amr 'l-Imām manūṭ bi'l-maṣlaḥah*). Once a *maṣlaḥah*-oriented selection has been made by the ruling authorities, everyone must comply with it: neither the *mujtahid* nor a layman is entitled to deviate from the command of the *ulu 'l-amr*, as this is where disagreement must be laid to rest.

It is, accordingly, the responsibility of the *ulu 'l-amr* to address issues of *ikhtilāf* that cause tension and disunity in the community generally as well as those that require urgent solutions. We know, of course, from the explicit terms of the Qur'ān that the *ulu 'l-amr* must resort to consultation, solicit expert opinion and counsel from the community itself, or even outside the community, if this proves to be necessary in order to resolve *ikhtilāf*. Here we may refer once again to the Qur'ānic directive which enjoins the believers to "ask those who have knowledge, if you yourselves do not know" (16:43). The search for consultative and well-informed solutions and participatory decision by the *ulu 'l-amr* thus summarise the Qur'ānic directives concerning the determination of *ikhtilāf*.

Consultation in the present-day Muslim communities is conducted according to pre-determined procedures at the level usually of representative assemblies which normally uphold the majority opinion. When the authorities in charge and the *ulu 'l-amr* have determined a disputed matter in the manner indicated above, it becomes a *ḥukm shar'ī* and a duty therefore of the citizens to rally behind it and abandon *ikhtilāf*.

Experience may have shown that due to a high level of sensitivity, certain issues have become a continuous hotbed of tension in the community, and it is possible that the *ulu 'l-amr* impose a total ban on all manners of disagreement and *ikhtilāf* over them. This is once again a legitimate exercise of the same authority that is vested in the *ulu 'l-amr*. We note, for example, the provisions in the constitution of Malaysia which totally proscribe disputation and public statements on

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racial issues as this is proven to be a highly sensitive question in that country. One can find, of course, similar provisions on the limitations that the applied law, or the *Sharī'ah*, might have imposed on the freedom of speech which may effectively put those issues beyond the realm of *ikhtilāf*.

To determine a correct procedure for the resolution of *ikhtilāf* in the present-day Muslim societies, one should naturally refer to the constitution and laws of the country or countries concerned. This also substantially means that we do not have a single formula, or a monolithic guideline, to provide us with a unified strategy for the resolution of *ikhtilāf*. Often we find that the *Sharī'ah*, or the applied law of a given country, only provide us with general guidelines and leave specific decisions to be made by the experts or those who are in charge of community affairs.

What I have explored above may still leave us askance with regard to certain levels or types of *ikhtilāf* that the Muslims are experiencing today. Then we need to bear in mind that we have to live with some of the instances of unresolved *ikhtilāf* in juridical and even theological issues that history has left for almost every generation, and of which the present generation is no exception. This is also a function, to some extent, of the circumstantial character of *ikhtilāf* which tends to rise in relationship to new developments and unprecedented experiences. It must remain, by the same token, the responsibility of every generation of the *ummah* to seize the opportunities they may be endowed with, or which they have at their disposal, to pursue the quest for resolving *ikhtilāf* within the ranks of the *ummah*, or else to find better ways of coming to terms with it.

[1]Cf. Ṭāhā Jābir al-'Alwānī, *Adab al-Ikhtilāf fī'l-Islām,* 3rd ed. (Herndon Va: al-Ma'had al-'Ālamī li'l-Fikr al-Islāmī, 1407/1987), 104.

[2]Cf. 'Abd al-Raḥmān al-Ṣābūnī, *et al*, *al-Madkhal al-Fiqhī wa Ta'rīkh al-Tashrī' al-Islāmī* (Cairo: Maktabah Wahbah, 1402/1982), 360.

[3]Cf. Al-'Alwānī, *Adab 'l-Ikhtilāf*, 104..

[4]Cf. Al-Ṣābūnī, *al-Madkhal al-Fiqhī,* 316.

[5]Muḥammad 'Abd Allāh al-Khaṭīb al-Tabrīzī, *Mishkāt al-Maṣābiḥ*, ed., M.N. al-Albānī, 2nd ed. (Beirut: al-Maktab al-Islāmī, 1399/1979), *Ḥadīth* no. 3285; Sālim 'Alī al-Bahnasawī, *al-Sunnah al-Muftrā 'Alayhā*, 2nd ed. (Kuwait: Dār al-Buḥūth al-'Ilmiyyah, 1401/1981), 186.

[6]The Qur'ān, 5:6.

[7]Cf. Muḥammad Abū Zahrah, *Uṣūl al-Fiqh* (Cairo: Dār al-Fikr al-'Arabī, 1377/1958), 75.

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[8]Cf. Abū Isḥāq Ibrāhīm al-Shāṭibī, *al-Muwāfaqāt fi Uṣūl al-Sharī'ah*, ed., Shaykh 'Abd Allāh Dirāz (Cairo: al-Maktabah al-Tijāriyyah, n.d.), 3: 88.

[9]For illustrations and details see the chapter entitled Commands and Prohibitions in Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: The Islamic Texts Society, 1991), 139-149.

[10]Cf. Al-Ṣābūnī, *al-Madhkal*, 314; *Jamāl al-Dīn 'Aṭiyyah, al-Tanẓīr al-Fiqhī* (Doha: n. p. 1407/1987), 135.

[11]Cf. Bahnasawī, *al-Sunnah*, 183.

[12]Cf. Al-'Alwānī, *Adab 'l-Ikhtilāf*, 110.

[13]Kamali, *Jurisprudence*, 99.

[14]See for details, Kamali, *Jurisprudence*, 71-79; Bahnasawī, *al-Sunnah*, 187.

[15]Abū Dāwūd al-Sījistānī, *Sunan Abū Dā'ūd*, Eng. trans. Ahmad Hasan (Lahore: Ashraf Press, 1984), 3: 103, *Ḥadīth* no. 3567.

[16]Cf. Bahnasawī, *al-Sunnah*, 189.

[17]Muḥammad 'Alī ibn Aḥmad ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*, ed., Aḥmad M. Shākir (Beirut: Dār al-Āfāq, 1400/1980) 5: 66; al-'Alwānī, *Adab al-Ikhtilāf*, 46.

[18]Ibn Ḥajar al-'Asqalānī, *Fatḥ al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī* (Cairo: Muṣṭafā al-Ḥalabī, 1378/1959), 13: 289; Tabrīzī, *Mishkāt*, *Ḥadīth* no. 2212; 'Alwānī, *Abad al-Ikhtilāf*, 47.

[19]Cf. Al-'Alwānī, *Adab al-Ikhtilāf*, 28.

[20]Muḥammad ibn Idrīs al-Shāfi'ī, *al-Risālah*, ed., Muḥammad S. Kaylānī, (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 2nd. ed. 1403/1983), 245.

[21]*Ibid.*

[22]Taqī al-Dīn Ibn Taymiyyah, *Iqtiḍā' al-Ṣirāṭ al-Mustaqīm li-Mukhālafat Aṣḥāb al-Jaḥīm*, ed., Nasir A. al-'Aql (n.p. 1404/1984), 124-134; see also for a discussion of *ikhtilāf*, Mohammad Hashim Kamali, *Freedom of Expression in Islam* (Cambridge: The Islamic Texts Society, 1997), 144-147.

[23]Ibn Taymiyyah, *Iqtiḍā'*, 91.

[24]See for details 'Aṭiyyah, *al-Tanẓīr*, 136-144; al-'Alwānī, *Adab al-Ikhtilāf*, 91-93.

[25]Abu'l Walīd ibn Rushd al-Qurṭubī, *Bidāyat al-Mujtahid* (Lahore: Faran Academy, n.d). 2: 249.

[26]*Ibid.*, see also for a discussion Jamāl al-Dīn 'Aṭiyyah, *al-Tanẓīr*, 144-145.

[27]Ibn Rushd, *Bidāyat al-Mujtahid*, 2: 250.

[28]*Ibid.*, 2: 250; 'Aṭiyyah, *al-Tanẓīr*, 145.

[29]See for an early and detailed discussion of this verse, al-Shāfi'ī, *al-Risālah*, 249-254 (sections 1705-1752). See also generally on *īlā'* Ibn Rushd, *Bidāyat al-Mujtahid*, 2: 74-78.

[30]Cf. Wahbah al-Zuḥaylī, *al-Fiqh al-Islāmī wa Adillatuh*, 3rd printing (Damascus: Dār 'l-Fikr, 1409/1989), 7: 536ff.

[31]Yūsuf al-Qaraḍāwī, *Madkhal li-Dirāsat al-Sharī'ah al-Islāmiyyah* (Cairo: Maktabah Wahbah, 1411/1990), 181.

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[32]Al-Zuḥaylī, *al-Fiqh al-Islāmī*, 7: 545.

[33]Al-Shāfi'ī, *al-Risālah*, 250 (section 1718); Ibn Rushd, *Bidāyat al-Mujtahid*, 2: 75.

[34]Cf. Abū 'Abd Allāh Muḥammad al-Qurṭubī, *al-Jāmi' li-Aḥkām al-Qur'ān*, (also known as *Tafsīr* al-Qurṭubī) (Cairo: Maṭba'ah Dār al-Kutub, 1387/1967), 3: 109; al-Qaraḍāwī, *Madkhal*, 184.

[35]Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-Kabīr* (Cairo: al-Maṭba'ah al-Bahiyyah, n.d.), 6: 88; al-Qurṭubī, *Tafsīr al-Qurṭubī*, 3: 111; Ibn Rushd, *Bidāyat al-Mujtahid*, 2: 76-77; al-Qaraḍāwī, *Madkhal*, 185.

[36]Abū Bakr 'Abd Allāh Ibn al-'Arabī, *Aḥkām al-Qur'ān* (Cairo: Dār al-Sa'adah, 1330 H), 1: 178; Ibn Rushd, *Bidāyat al-Mujtahid*, 2: 76.

[37]Al-Qaraḍāwī, *Madhkal*, 186-187.

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